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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEON ALPERT, an individual on behalf of himself, and on behalf of all persons similarly situated, and on behalf of the general public,) Case No. 08 CV 582 W WMc
	) <u>CLASS ACTION</u>
Plaintiff,)
	) DECLARATION OF LEON ALPERT IN
vs.	) OPPOSITION TO DEFENDANT'S
TIME WARNER CABLE INC., a Delaware Corporation, and Does 1 to 100,	) MOTION FOR SUMMARY JUDGMENT
)
Defendant)
	) Date: June 30, 2008
	) Time: 10:00 a.m.
	) Place: Courtroom 7; 880 Front Street, San
	) Diego, CA
	) Judge: Hon. Thomas J. Whelan
)
	) [No Oral Argument Pursuant to LR 7.1(d)(1)]
)
	) Complaint: March 13, 2007
	) Removal: March 27, 2008

I, Leon Alpert declare as follows:

1 I am the representative plaintiff in this class action litigation and have personal knowledge
2 of each of the facts set forth herein. If called upon as a witness I could and would testify
3 competently thereto.

4 2. This declaration is submitted in opposition to Time Warner Cable's (TWC) Motion for
5 Summary Judgment (MSJ).

6 3. TWC's MSJ relies upon misrepresentations of my deposition testimony. In particular,
7 TWC's MSJ is premised largely on one central and repeated misstatement: that in late 2006 I
8 specifically requested that TWC change my services and bundle me to thereby lower my bill. See,
9 e.g., TWC's Separate Statement of "Fact" Nos. 25, 26, 27, 28, 40, 42, 43, 45, 62, 64, 72, 74, 76, 87,
10 89, 96, 98, 110, 112, 113, 115. Each of these purported "undisputed facts" assumes that in late
11 2006 I called TWC and specifically requested additional services and that these services be
12 "bundled." That is completely false.

13 4. I never testified that I asked TWC to bundle me for a discount in late 2006. Rather, I
14 clearly testified that I called to complain to TWC that my bill was too high and that TWC must
15 lower it. Specifically, I testified as follows: "It's my sworn testimony that I have no recollection
16 about speaking about bundles with the Time Warner rep, only about my bill and what I thought I
17 should be paying." Decl. Ramos, Exhibit D, Depo Alpert at p.106.

18 5. I did not ask for any bundle. I did not ask to change services. I just wanted my bill to be
19 corrected, and it was. Indeed, during that conversation, TWC admitted its error to me but refused
20 to credit more than one month of the overcharge.

21 6. TWC's citation to my deposition at 99 is in response to the question TWC originally
22 presented to me on page 97, line 8, where the question was as follows: "There was a package of
23 movie channels where you bought four that were individually priced at maybe 6.95 or whatever
24 they were, and you bought them for a package for \$ 11. Correct?" Decl. Ramos, Exhibit D, Depo
25 Alpert at p.97:8-12. The following two pages of the deposition was clarification of that question
26 interspersed with objections by my counsel. I eventually answered that specific question on page
27 99, which TWC now misrepresents to be an answer to the question presented later on p.106.

1 7 I am a resident of SeaPoint, a condominium project consisting of about 250 units near
2 Torrey Pines Beach in Del Mar, CA. I have had TWC as my cable provider for as long as they
3 have contracted with my HOA.

4 8 TWC provides me with basic cable which I pay TWC through the assessment of my HOA
5 monthly dues. I pay about \$ 28 77 each month for basic cable to my HOA which, in turn, remits
6 those monies to TWC.

7 9 Since at least 2003, I have not had a choice of cable providers. In fact, as best I can recall,
8 TWC has been the exclusive cable provider to SeaPoint since the mid 1990s. I believe TWC
9 remains the exclusive provider of cable to SeaPoint even though I have learned that the FCC has
10 recently ruled such exclusive relationships are unlawful and unfair.

11 10. Among the services provided to me by TWC, I have basic cable, Roadrunner high speed
12 Internet service, telephone service, and an assortment of movie channels. I have had some of these
13 various additional services since 2003. Although I have ordered Additional Services in addition to
14 basic cable, I do not recall ever being provided a "Subscriber Agreement."

15 11. In the fall of 2006 I received a notice from my HOA that TWC had lower pricing for
16 services provided to HOA members than I was paying at the time. The notice was attached to a
17 newsletter I received from my HOA.

18 12. As a result of receiving that notice, I called TWC and demanded that my bill be
19 immediately corrected and that I receive a credit for the overcharges I had suffered. TWC admitted
20 its error and corrected by bill. I did not order any new services nor did I request any sort of
21 "bundle." I just asked to have my bill corrected, and it was.

22 13. Although TWC admitted its error and corrected my bill, TWC refused to give me a credit
23 for all of the months, if not years, of overcharges. Instead, TWC gave me one month's credit for
24 phone service, or something similar. TWC refused to properly credit my account for its hundreds
25 of dollars of overcharges.

26 14. The next month after I called TWC and complained, my bill went down by about \$ 30 and
27 finally reflected correct HOA pricing. However, to this day, TWC has not properly credited my
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1 account for the overcharges.

2 15. I am familiar with TWC's television ads and its Internet website. To this day, I have never
3 seen any HOA pricing advertised by TWC such that I, or any other potential class member, would
4 ever have known that HOA pricing was available. Had I not received the HOA newsletter in late
5 2006, I too would never have known such pricing existed.

6 16. I understand that TWC is taking the position that I had only 30 days to inform TWC of
7 errors on my billing statements. Since TWC has concealed its HOA pricing from me and the other
8 class members, I am not sure exactly how I or any class member would have been able to detect the
9 error within 30 days, if at all. While I do not think it unreasonable to require consumers to
10 complain within 30 days about obvious errors in their bills, I am not a lawyer and do not know if
11 such a provision is legal or enforceable. Moreover, I do not think it is reasonable to have such a 30
12 day rule when the vendor, in this case TWC, is concealing information necessary for a consumer to
13 determine if the bill has an error. For example, the itemization of charges in TWC's bills was
14 deceptive in that the bills did not disclose the existence of HOA pricing available to me. I never
15 agreed that TWC could deceive me and then limit me to 30 days to catch the deception.

16 17. Contrary to TWC's statements, I never ordered any of my services "a la carte." I simply
17 ordered cable services. In fact, some of the services I ordered were put by TWC into what appear
18 on my billing statements to be mini-bundles. My billing statements, even before TWC put me into
19 an HOA bundle in late 2006, clearly indicate that I was not "a la carte." I was, apparently, in
20 various mini-bundles, though I had never specifically requested any particular type of package or
21 pricing – I had just ordered cable and cable related services and was billed by TWC accordingly.
22 Until I called and complained in September of 2006, TWC had never put me into an HOA bundle.

23 18. Given TWC's ongoing television advertising campaign over the last several years
24 encouraging consumers to order more services and thereby get bigger discounts, I assumed TWC
25 would likewise provide me such discounts when I ordered additional services. TWC's television
26 advertising stated plainly during the class period, as it does to this day, that if I ordered other
27 additional services (in addition to basic cable) such as premium movie channels, telephone and/or

1 Internet service, I would pay less since those services are discounted when many services are
2 ordered together. However, unbeknownst to me until the fall of 2006, I had not been given a
3 discount for ordering more services and was never informed by TWC that HOA pricing was
4 available for the exact same set of services that I had purchased. Since TWC did not advertise
5 HOA pricing, I had no way of knowing what the correct charges were for the services I was
6 receiving.

7 19. I am not aware of any other cable company that offers movies on demand and other cable
8 television related services at SeaPoint without the consumer purchasing basic cable service from
9 that provider. TWC was my basic cable provider. Thus, I ordered additional cable services from
10 TWC, not another cable company. Moreover, since residents like pay for basic cable to TWC
11 through our HOA, there is no other meaningful economic choice in selecting a provider for
12 additional services.

13
14 20. TWC argues that instead of ordering additional services from TWC I could have chosen
15 other alternatives. For example, TWC argues that I could have simply rented movies, read books,
16 used a satellite service, used another phone provider, and used another Internet provider. But since
17 I was already paying TWC each month for basic cable service through my HOA, it would make
18 little sense to pay another cable or satellite provider for the same service just to get additional
19 services. There was never a meaningful choice to select another provider for additional services
20 while simultaneously paying TWC each and every month.

21
22 21. As for reading books, yes, I do read books. But I have yet to find a book that broadcasts
23 live Padres games or otherwise provides real time news and information. Nor have I found a book
24 that provides recently released movies on demand. TWC provided such content in addition to the
25 basic cable service already in my home.

26 22. In its Motion and Separate Statement, TWC speculates that "HOA Pricing" as referred to in
27 my complaint "is merely the pricing of one bundle of Additional Services that, until recently, was
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1 available to HOA residents who were willing to purchase all of the bundled services." HOA
2 Pricing refers to both TWC's concealed HOA pricing which, apparently, became effective in 2005
3 and to TWC's pricing prior to that which should have reflected the fact that I was already paying
4 for basic cable

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6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct. Executed this 18 day of March, 2008 at Encinitas, California

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